

Steven A. Kraemer, OSB No. 882476  
E-mail: sak@hhw.com  
Leslie A. Edenhofer, OSB No. 093380  
E-mail: lae@hhw.com  
**HOFFMAN, HART & WAGNER LLP**  
1000 S.W. Broadway, Twentieth Floor  
Portland, Oregon 97205  
Telephone: (503) 222-4499  
Facsimile: (503) 222-2301

Of Attorneys for Defendants City of Beaverton and Jason Buelt

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

**HAO XENG VANG**

Plaintiff,

No. CV-09-928-BR

v.

**CITY OF BEAVERTON and JASON  
BUEL**

Defendants.

DEFENDANTS CITY OF BEAVERTON  
AND JASON BUEL'S ANSWER AND  
AFFIRMATIVE DEFENSES TO  
PLAINTIFF'S FIRST AMENDED  
COMPLAINT

**Jury Trial Demanded**

Defendants City of Beaverton and Jason Buelt (hereinafter "Defendants") deny each and every allegation of plaintiff's First Amended Complaint except as admitted in this Answer.

1.

Defendants admit that jurisdiction and venue are proper and that, so long as federal claims remain, this court has supplemental jurisdiction.

2.

Defendants admit that the City of Beaverton is a municipal corporation and a political subdivision of the State of Oregon.

3.

Defendants admit that Defendant Jason Buelt was acting within the scope of his employment or duties as a police officer for the City of Beaverton at the time of the incident described in the complaint.

4.

Defendants admit that Defendant Jason Buelt was acting under color of law for the City of Beaverton at the time of the incident described in the complaint.

5.

Defendants admit plaintiff was arrested on or about August 17, 2008, that he was briefly placed in jail, that his cell phone was seized as evidence, that a file was deleted from the phone and that he was not prosecuted.

FOR A FURTHER SEPARATE ANSWER AND BY WAY OF FIRST AFFIRMATIVE DEFENSE, defendants allege as follows:

6.

Some or all of the claims against the defendants, either individually or jointly, fail to state a claim for relief.

FOR A FURTHER SEPARATE ANSWER AND BY WAY OF SECOND AFFIRMATIVE DEFENSE, defendants allege as follows:

7.

Plaintiff's state claims are subject to the conditions, limitations, and immunities of the Tort Claims Act, ORS 30.260, *et seq.*

FOR A FURTHER SEPARATE ANSWER AND BY WAY OF THIRD AFFIRMATIVE DEFENSE, defendants allege as follows:

8.

Any defendant sued in his individual capacity, including Jason Buelt, is entitled to qualified immunity.

FOR A FURTHER SEPARATE ANSWER AND BY WAY OF FOURTH AFFIRMATIVE DEFENSE, defendants allege as follows:

9.

There was reasonable suspicion to detain plaintiff.

FOR A FURTHER SEPARATE ANSWER AND BY WAY OF FIFTH AFFIRMATIVE DEFENSE, defendants allege as follows:

10.

There was probable cause to arrest plaintiff.

FOR A FURTHER SEPARATE ANSWER AND BY WAY OF SIXTH AFFIRMATIVE DEFENSE, defendants allege as follows:

11.

The actions of Defendant Jason Buelt were privileged, as they were necessary to carry out his duties as a law enforcement officer.

FOR A FURTHER SEPARATE ANSWER AND BY WAY OF SEVENTH AFFIRMATIVE DEFENSE, defendants allege as follows:

12.

The actions of Defendant Jason Buelt were justified, as they were necessary to carry out his duties as a law enforcement officer.

FOR A FURTHER SEPARATE ANSWER AND BY WAY OF EIGHTH AFFIRMATIVE DEFENSE, defendants allege as follows:

13.

There was probable cause to search the cell phone.

FOR A FURTHER SEPARATE ANSWER AND BY WAY OF NINTH

AFFIRMATIVE DEFENSE, defendants allege as follows:

14.

Any search of the cell phone was lawful and did not violate any constitutional rights of the plaintiff.

WHEREFORE, having fully answered plaintiff's First Amended Complaint, defendants pray that the same be dismissed, they be awarded their costs, disbursements and reasonable attorney fees incurred herein, and such other relief as the Court deems just and equitable. Defendants demand trial by jury.

Dated this 4<sup>th</sup> day of December, 2009.

HOFFMAN HART & WAGNER, LLP

By: /s/ Steven A. Kraemer  
Steven A. Kraemer, OSB No. 882476  
Leslie A. Edenhofer, OSB No. 093380  
Of Attorneys for Defendants  
(503) 222-4499